



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Water, Wildlife and Fisheries Republican Members
From: Subcommittee on Water, Wildlife and Fisheries staff: Annick Miller, x58331
(annick.miller@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov), and
Kirby Struhar (kirby.struhar@mail.house.gov)
Date: Wednesday, March 6, 2024
Subject: Legislative Hearing on H.R. 7408, “*America’s Wildlife Habitat Conservation Act*”

The Subcommittee on Water, Wildlife and Fisheries will hold a legislative hearing on H.R. 7408 (Rep. Westerman), “*America’s Wildlife Habitat Conservation Act*,” **on Wednesday, March 6, 2024, at 10:15 a.m. in 1324 Longworth House Office Building.**

Member offices are requested to notify Thomas Shipman (thomas.shipman@mail.house.gov) by 4:30 p.m. on Tuesday, March 5, 2023, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- States and tribes know best how to conserve and restore habitat for at-risk species within their borders.
- The “America’s Wildlife Habitat Conservation Act” (AWHCA) provides states and tribes with the resources necessary to carry out habitat restoration projects vital to preventing the listing of species and accelerating the delisting of species under the Endangered Species Act (ESA).
- Top-down federal regulations and federal management of listed species have not resulted in the recovery of those species. Only 3 percent of species listed under the ESA have ever been delisted.
- The AWHCA empowers states and private landowners in the ESA decision-making process by providing regulatory certainty and incentives to recover and restore habitat for listed species.
- The National Wildlife Refuge System is a crown jewel of American wildlife conservation. Tools such as Good Neighbor Authority are needed to ensure they are healthy for decades to come.

II. WITNESSES

- **Mr. Matthew Strickler**, Deputy Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C.
- **Mr. Austin Booth**, Director, Arkansas Game and Fish Commission, Little Rock, Arkansas
- **Mr. Ryan Bronson**, Director of Government Affairs, Rocky Mountain Elk Foundation, Missoula, Montana
- **Mr. David P. Tenny**, President and CEO, National Alliance of Forest Owners, Washington, D.C.
- **Mr. Glenn Olson**, Donal O'Brien Chair in Bird Conservation and Public Policy National Audubon Society, National Audubon Society, New York, New York [*Minority Witness*]

III. BACKGROUND

[H.R. 7408 \(Rep. Westerman, R-AR\), “America’s Wildlife Habitat Conservation Act”](#)

Overview

For over 80 years, our nation’s sportsmen and women have been the primary funders of fish and wildlife conservation in the United States through a “user pays — public benefits” structure known as the “American System of Conservation Funding.”¹ Last year, the Department of the Interior announced that more than \$1.6 billion in funding was generated by sportsmen and women through excise taxes on recreational shooting, hunting, fishing, and boating equipment.²

However, as our nation’s state fish and wildlife agencies face ever-increasing conservation challenges, including an increasingly inflexible and ineffective Endangered Species Act (ESA), new funding sources alone are not enough to address these needs. They must be coupled with meaningful reforms to the federal regulatory scheme. H.R. 7408 addresses both issues by providing states, territories, and tribes with additional resources necessary to carry out habitat restoration projects vital to preventing the listing of species and accelerating the delisting of species under the ESA.

Title I: Wildlife Conservation and Restoration

In 2000, Congress amended the Pittman-Robertson Act to include a subaccount known as the Wildlife Conservation and Restoration Program to provide additional funding for wildlife restoration and conservation. This provision appropriated \$50 million to the subaccount “for the development, revision, and implementation of wildlife conservation and restoration plans and programs.”³

¹ “The American System of Conservation Funding.” Association of Fish & Wildlife Agencies. <https://www.fishwildlife.org/afwa-informs/resources/american-system-conservation-funding>

² “Over \$1.6 Billion Will Support State Fish and Wildlife Conservation and Outdoor Access.” U.S. Fish and Wildlife Service. 03/13/23. <https://www.fws.gov/press-release/2023-03/over-16-billion-will-support-conservation-agencies-and-outdoor-access>

³ Public Law 106-553, Federal Funding Fiscal Year 2001. <https://www.govinfo.gov/content/pkg/PLAW-106publ553/pdf/PLAW-106publ553.pdf>

These plans, known as State Wildlife Action Plans (SWAPs), serve as a blueprint for identifying each state and territory's unique conservation needs. Congress required each SWAP to have eight elements: 1) distribution and abundance of wildlife species; 2) locations and condition of key habitats and community types; 3) wildlife and habitat threats; 4) conservation actions to address these threats; 5) plans for monitoring species, habitats and the effectiveness of conservation actions; 6) plans for review and adaptive management of the strategy; 7) plans to coordinate strategy development, implementation, and review with federal, state, local agencies and Indian tribes; and 8) opportunities for broad public participation in plan development and implementation.⁴



Figure 1 Red Cockaded Woodpecker, which is considered a species of greatest conservation need in many Southeastern states. Source: DOI

According to the Association of Fish and Wildlife Agencies, the SWAPs of the fifty states and the U.S. territories contain the latest science and information to guide the conservation of over 12,000 species that states consider to be of greatest conservation need.⁵ These SWAPs were most recently revised in 2015, with the next major revision to be completed by 2025. Links to the current SWAP from each state and territory can be seen [here](#).

In 2000, Congress also created the State Wildlife Grant Program to provide critical funding to state and territory fish and wildlife agencies to implement their SWAPs to conserve at-risk fish and wildlife.⁶ In Fiscal Year (FY) 2023, states received a total of \$67.6 million through this grant program.⁷ The formula used for apportionment to each state is one-third based on the total land area of the state and two-thirds based on the population of each state.⁸

The AWHCA replaces the existing State Wildlife Grants Program by creating a Wildlife Habitat Conservation and Restoration subaccount under the Pittman-Roberston Act. This grant program would be authorized at no more than \$300 million per fiscal year for five years. Funding would be apportioned to states based on a new formula: one-half based on the land area of the state, one-quarter based on the state's population, and one-quarter based on the number of species listed under the ESA within that state. This change to the existing formula will allow for funding to get to the places where it is needed most.

The funding authorized by the AWHCA must be used to carry out the state's SWAP and to restore habitat for species that are listed under the ESA or by state law. Funds can also be used

⁴ *Id.*

⁵ "State Wildlife Action Plans." Association of Fish and Wildlife Agencies. [State Wildlife Action Plans: Association of Fish & Wildlife Agencies \(fishwildlife.org\)](https://www.fishwildlife.org/).

⁶ "The State and Tribal Wildlife Grant Programs: 20 Years of Conservation Success." September 2020, U.S. Fish & Wildlife Service. https://www.fishwildlife.org/application/files/2616/0087/6829/STWG_2020_Report_Final.pdf.

⁷ [Public Law 117-328](#).

⁸ "About State Wildlife Action Plans." Origins of the State Wildlife Action Plans. University of Michigan Department of Natural Resources and Environment. [State Wildlife Action Plans \(umich.edu\)](https://www.umich.edu/).

for other habitat restoration projects, such as forest management projects that result in the restoration of wildlife habitat for species of greatest conservation need and projects to remove invasive species that are damaging habitat for species of greatest conservation need. Grants may also be used for collaboration with and providing technical assistance for private landowners to conserve and restore wildlife habitat on private lands.

This section also contains a savings clause to prevent any lands owned by state governments from being transferred to the federal government, therefore preventing any growth in the federal estate through this program. A savings clause is also included to prevent any funds from this section from being used to remove or modify the operation of a federally-owned dam.

Title II: Tribal Wildlife Conservation and Restoration

Under current law, federally recognized tribes are eligible to apply for grant funding through the Tribal Wildlife Grants Program. This program was authorized in the FY 2002 Department of the Interior and Related Agencies Appropriations Act (Public Law 107-63), which specified that the Fish and Wildlife Service (FWS) must set aside funds from the Wildlife Grants Program to establish a competitive grant program available to federally recognized tribes.⁹ In FY 2023, Congress specified that \$6.2 million dollars be set aside for this program.¹⁰

The AWHCA would replace this program with a new noncompetitive Tribal Wildlife Conservation and Restoration Grant Program, authorized at no more than \$20 million annually for five years. Tribes would use these funds to develop and implement habitat conservation and restoration programs on tribal lands, as well as habitat restoration projects for ESA-listed species on tribal lands. In addition, funds could be used for other habitat restoration projects, such as forest management projects that result in the restoration of wildlife habitat for tribal species of greatest conservation need and projects to remove invasive species that are damaging habitat for tribal species of greatest conservation need.

Title III: Conservation and Management for Wildlife Refuges

The National Wildlife Refuge System (System) is a network of FWS-administered lands, submerged lands, and waters that provide habitat for fish and wildlife resources across the United States and U.S. territories.¹¹ The System is made up of 567 national wildlife refuges (refuges), 38 wetland management districts, five marine national monuments, and 63 refuges with wilderness areas.¹² These units make up nearly 900 million acres, with over 90 million acres of refuges in non-insular areas.¹³ In 1997, Congress passed the National Wildlife System Improvement Act (Public Law 105-57), which established that “the mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate,

⁹ “FWS-NNA National Native American Programs Office.” FY 2023 Tribal Wildlife Grants Program Funding Opportunity. FY 2023. [FY 2023 Tribal Wildlife Grants \(TWG\) Program Funding Opportunity Announcement \(fws.gov\)](#).

¹⁰ [Public Law 117-328](#).

¹¹ “U.S. Fish and Wildlife Service: An Overview.” Christopher R. Field. Congressional Research Service. 7/20/18. [U.S. Fish and Wildlife Service: An Overview \(congress.gov\)](#).

¹² “Visit a National Wildlife Refuge Facility.” U.S. Fish & Wildlife Service. [Visit Us | U.S. Fish & Wildlife Service \(fws.gov\)](#).

¹³ “U.S. Fish and Wildlife Service: An Overview.” Christopher R. Field. Congressional Research Service. 7/20/18. [U.S. Fish and Wildlife Service: An Overview \(congress.gov\)](#).

restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”¹⁴

In successive budget requests to Congress, the FWS has requested Good Neighbor Authority (GNA) to aid them in better managing the System.¹⁵ Congress originally developed GNA to give states the ability to assist in active forest management on U.S. Forest Service (USFS) and Bureau of Land Management (BLM) lands. The GNA authority given to the FWS largely mirrors those in place for



*Figure 2 Ducks resting at Hola Bend National Wildlife Refuge in Arkansas
Source: FWS*

other federal land management agencies. Under these authorities, states, counties, and tribes can enter into agreements with FWS, known as Good Neighbor Agreements, to conduct restoration projects such as fuels reduction, habitat improvement, and road restoration. GNA is intended to promote collaboration between these entities and the federal agencies to carry out restoration work across jurisdictions.

Additionally, the bill gives the FWS the authority to build outdoor recreation infrastructure projects through GNA. Many states and local entities have expressed the desire to upgrade federal recreation infrastructure but are prevented from doing so. This provision would cut the bureaucratic red tape to allow infrastructure upgrades to proceed more expeditiously. This Committee has taken steps to give similar authorities to other land management agencies through the EXPLORE Act, which was favorably reported earlier this year.¹⁶

H.R. 7408 also grants the FWS stewardship contracting authority, which it has requested in successive budget requests to Congress.¹⁷ This authority would allow the FWS to partner with non-profit organizations and private companies to aid in the management of refuges, mainly on timber management and wildlife habitat restoration projects.

¹⁴ 16 U.S.C. §668dd(a)(2).

¹⁵ “Budget Justifications and Performance Information Fiscal Year 2024.” The United States Department of the Interior. U.S. Fish and Wildlife Service. Page EX-10. [fy2024-fws-greenbook.pdf-508.pdf](https://www.fws.gov/greenbook/fy2024-fws-greenbook.pdf-508.pdf).

¹⁶ Full Committee Mark Up. January 17, 2024. <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=415394>.

¹⁷ *Id.*

Title IV: Incentivizing Wildlife Conservation on Private Lands

The Endangered Species Act (ESA or Act) was enacted in 1973:

To provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth [in the Act].¹⁸

Unfortunately, the ESA has been ineffective in accomplishing its goal of recovering species and taking them off the endangered species list, with only three percent of species that have ever been listed under the act having ever been delisted.



Figure 3 A Gopher Tortoise, which is listed as a threatened under the ESA, on private forest land. Source: Working Forests Initiative

Section 4 of the ESA charges the FWS and the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS) (the Services) to review and act on petitions to list species as threatened or endangered and to designate their critical habitat.¹⁹ Private lands play a significant role in managing and the recovery of endangered and threatened species. As Aldo Leopold put it, “conservation will ultimately boil down to rewarding the private landowner who conserves the public interest.”²⁰ In 2023, the FWS reported that “two-thirds of federally listed species have at least some habitat on private land, and some species have most of their remaining habitat on private land.”²¹ For example, according to the Audubon Society, more than 80 percent of the grassland and wetlands that provide essential bird habitat are in private ownership.²²

To incentivize private landowners to invest in wildlife conservation on their lands, H.R. 7408 amends the ESA to provide regulatory certainty to private landowners. This is done by codifying into law Candidate Conservation Agreements (CCAs) and Candidate Conservation Agreements with Assurances (CCAAs). These agreements allow private landowners to commit to

¹⁸ Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.

¹⁹ *The Endangered Species Act: How Litigation is Costing Jobs and Impeding True Recovery Efforts: Oversight Hearing Before the H. Comm. On Natural Resources*, 112th Cong. (2011) ([testimony of Karen Budd-Falen, Budd-Falen Law Offices, LLC., at 10](#)).

²⁰ Flader, S.L., Callicott, J.B., & Leopold, A. (1992). *The River of the mother of God: and other Essays by Aldo Leopold*. Madison: University of Wisconsin Press.

²¹ “ESA Basics: 50 Years of Conserving Endangered Species.” U.S. Fish and Wildlife Service. 2/1/23. [Endangered Species Act Basics \(fws.gov\)](#).

²² Wilsey1, CB, J Grand, J Wu, N Michel, J Grogan-Brown, B Trusty. 2019. North American Grasslands. National Audubon Society, New York, New York, USA. [audubon_north_american_grasslands_birds_report-final.pdf \(nas-national-prod.s3.amazonaws.com\)](#).

implementing voluntary actions designed to reduce threats to a species that is a candidate to be listed under the ESA. In return, if the species is listed, landowners who are a part of the agreement would be able to continue their operations should a listing take place. Currently, these agreements only exist through executive action and secretarial orders, giving the Services great discretion in how they take these agreements into account when making listing decisions. H.R. 7408 explicitly states that the Services must take the conservation benefit of these agreements into account when making listing decisions.



Figure 4 A Lesser Prairie Chicken, which is covered by a successful CCAA, but was listed under the ESA in 2022.
Source: Carlsbad Current-Argus

In addition, H.R. 7408 would give private landowners who are investing in, or want to invest in, habitat conservation on their lands the regulatory certainty to do so. Specifically, the bill prohibits the Services from designating critical habitat on private lands that are implementing habitat conservation and restoration actions designed to conserve the species in question and approved by the Services. This language mirrors language from the Sikes Act (16 U.S.C. 670a), which prevents critical habitat designations on lands controlled by the Department of Defense if those lands are implementing approved habitat conservation measures.

Title V: Forest Information Reform

In 2015, the Ninth Circuit Court of Appeals ruled in *Cottonwood Environmental Law Center v. United States Forest Service (Cottonwood)* that the USFS must reinitiate ESA consultation on completed forest plans when a new species is listed, when critical habitat is designated, or when new information is brought forward.²³ The U.S. Supreme Court denied certiorari of the Obama administration’s petition to review and overturn the *Cottonwood* decision in 2016.²⁴ The result has led to significant challenges for the USFS’ management of National Forest System lands, especially in Region 1 (North Idaho, Montana, and part of northeastern Washington). According to the USFS, “the cumulative cost to fully complete the backlog of consultations could exceed \$23,000,000 with an average estimated cost per plan of \$264,367



Figure 5 Satellite Image of the Hermits Peak Fire in New Mexico that occurred in 2022.
Source: Marax Technologies

²³ *Cottonwood Environmental Law Center v. U.S. Forest Service*, No. 13-35624 (9th Cir. 2015).

²⁴ Order List, October 11, 2016. U.S. Supreme Court. https://www.supremecourt.gov/orders/courtorders/101116zor_7khn.pdf.

based on 87 plans currently identified.”²⁵ While the Consolidated Appropriations Act of 2018 provided a partial fix to the *Cottonwood* ruling by instituting an exemption from the re-initiation of consultation for species listings and critical habitat designations (not new information), this fix expired on March 23, 2023.²⁶ Resolving this issue is critically important for the protection of our nation’s forests and public lands and the prioritization of critical agency resources.

The Trump administration attempted to address *Cottonwood* by crafting a proposed rule, “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” published on January 12, 2021, to fix the *Cottonwood* precedent.²⁷ Unfortunately, the Biden administration has refused to finalize this rule. The House Committee on Natural Resources favorably reported H.R. 200, the “FIR Act” on May 17, 2023. The language in H.R. 7408 is the latest example in a long, bipartisan history that has spanned multiple administrations and Congresses to enact a *Cottonwood* fix.

Title VI: Providing for Greater Incentives to Recover Listed Species

The ESA requires the Services to “cooperate to the maximum extent practicable with the states” in implementing the Act, including “consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.”²⁸ Unfortunately, over the course of the ESA’s fifty-year history, states have often been left out of the process, with power being consolidated in the hands of officials at the Services. H.R. 7408 reasserts congressional intent by giving regulatory incentives and opportunities for states in the ESA process.

Section 9 of the ESA prohibits the “take” of an endangered species. “Take is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.”²⁹ The Act, however, does not automatically apply the same prohibitions to threatened species. Instead, Section 4(d) gives the Services the discretion to grant some exceptions to the take prohibitions for threatened species.³⁰ While NMFS has taken advantage of this flexibility,³¹ the FWS



Figure 6 A Grizzly Bear, which is an ESA listed species states have shown a large interest in taking over management of.
Source: National Wildlife Federation

²⁵ Chris French, Questions for the Record, House Committee on Natural Resources, March 23, 2023.

<https://docs.house.gov/meetings/II/II10/20230323/115529/HHRG-118-II10-20230323-SD050.pdf>.

²⁶ Public Law 115-141.

²⁷ U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration, “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” published in the Federal Register on August 27, 2019, <https://www.federalregister.gov/documents/2019/08/27/2019-17517/endangered-and-threatened-wildlife-and-plants-regulations-for-interagency-cooperation>.

²⁸ Endangered Species act of 1973, 16 U.S.C., 1531-1544 (1973).

²⁹ [16 USC Ch. 35. Sec 1532.](#)

³⁰ [16 USC Ch. 35. Sec 1533.](#)

³¹ [88 FR 40742.](#)

continues to take steps to manage threatened species as endangered species, counter to congressional intent.³²

The FWS began issuing 4(d) rules in 1974, but in 1975 they finalized what has become known as the “blanket 4(d) rule” (blanket rule).³³ This rule allowed the FWS to extend all Section 9 prohibitions to threatened species unless a specific 4(d) rule for the species was drafted that exempted certain activities from those prohibitions. The blanket 4(d) rule effectively removes incentives for parties impacted by threatened species and any of the benefits that result in downlisting a listed species because no regulatory burdens are lowered.

H.R. 7408 changes this dynamic by requiring the Services to include the following whenever they issue a 4(d) rule that contains take prohibitions: (1) Objective, incremental recovery goals for the species in question; (2) Provide for the stringency of the prohibitions to decrease as such recovery goals are met; and (3) Provide for state management of the species once all recovery goals are met in preparation for the species being delisted.

These steps create greater accountability, transparency, and incentives to take conservation actions that restore habitat for and recover listed species because tangible regulatory relief will come with it. The bill also adopts a similar approach for the recovery of species listed as endangered. Specifically, the bill requires the Services to propose objective, incremental recovery goals for endangered species, and those goals would form the basis for a 4(d) rule when the species is downlisted to threatened species status.

H.R. 7408 gives states the opportunity to propose a “recovery strategy” for threatened species and species that are candidates for listing in that state. The bill requires the Services to review the proposed recovery strategy and determine whether 1) the state would be able to implement the strategy; and 2) whether that strategy would be effective in conserving the species in question. If it is determined that both of those tests are satisfied, the strategy is approved, and it would become the regulation governing the species in that state.

In addition, this section amends the definition of “conserve,” “conserving,” and “conservation” to allow for the regulated take of threatened species. Currently, the definition only allows for regulated take “in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved.”³⁴ This standard has been interpreted by federal courts to mostly prohibit any regulated take of threatened species.³⁵ This raises tensions with the public, who have no means to control populations of listed species, even when the population of that species is well above its population goals. This section amends the definition to allow for regulated take “at the discretion of the Secretary,” therefore granting additional flexibility to the Services.

³² Revisions of the Regulation for Prohibitions to Threatened Wildlife and Plants.” Megan E. Jenkins and Camille Wardle. The Center for Growth and Opportunity at Utah State University. 10/17/18. [Regulations for Prohibitions to Threatened Wildlife and Plants - The CGO.](#)

³³ “Unlocking the Full Power of Section 4(d) to Facilitate Collaboration and Greater Species Recovery.” David Willms, J.D. https://republicans-naturalresources.house.gov/UploadedFiles/Codex_II_Chapter_3.pdf.

³⁴ [16 USC Ch. 35, Sec 1532.](#)

³⁵ “Unlocking the Full Power of Section 4(d) to Facilitate Collaboration and Greater Species Recovery.” David Willms, J.D. https://republicans-naturalresources.house.gov/UploadedFiles/Codex_II_Chapter_3.pdf.

IV. MAJOR PROVISIONS

[H.R.7408 \(Rep. Westerman, R-AR\), “America’s Wildlife Habitat Conservation Act.”](#)

V. COST

- A formal cost estimate from the Congressional Budget Office (CBO) is not yet available. As written, H.R. 7408 has a 5-year sunset and includes a list of rescissions and deauthorizations within the Subcommittee on Water, Wildlife and Fisheries’ jurisdiction which offset the authorization of appropriations included in Titles I and II.

VI. ADMINISTRATION POSITION

The administration position is currently unknown.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 7408](#)